

Ruling 225-03-1

Issued: May 5, 2003

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A ruling has been requested concerning the applicability of certain provisions of the Income Tax Act to the following facts:

X and Y are individuals married to each other. X and Y moved to New Mexico from Pennsylvania and became residents of New Mexico in 1999. In 1992 X retired from company Z. When X retired, X rolled over X's 401(K) into an IRA. Pennsylvania, by not allowing a deduction for amounts contributed to IRA or 401(K) accounts, does not follow the federal treatment of such contributions. X and Y made contributions to their IRA and 401(K) accounts during the period of 1986 through 1998. In addition, the City of Philadelphia did not allow a deduction for X's 401(K) contributions during this time period.

X and Y ask whether the cost basis for their IRA distributions should be different for New Mexico income tax purposes than for federal income tax purposes. The cost basis for New Mexico income tax purposes would include the IRA and 401(K) contributions that X and Y made from 1986 through 1998 when they were subject to taxation by Pennsylvania.

No provision of the Income Tax Act deals specifically with IRA contributions or withdrawals, but Section 7-2-13 NMSA 1978 states (in part):

When a resident individual is liable to another state for tax upon income derived from sources outside this state but also included in net income under the Income Tax Act as income allocated or apportioned to New Mexico pursuant to Section 7-2-11 NMSA 1978, the individual, upon filing with the secretary satisfactory evidence of the payment of the tax to the other state, shall receive a credit against the tax due this state in the amount of the tax paid the other state with respect to the income that is required to be allocated or apportioned to New Mexico....

Section 7-2-3 NMSA 1978 states in part that a tax is imposed upon the net income of every resident individual. Section 7-2-2(N) NMSA 1978 defines "net income" to include base income adjusted to exclude amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States. Section 7-2-2(B) NMSA 1978 defines "base income" as adjusted gross income plus net operating losses, interest from a state or local bond and any other income upon which a federal tax is calculated pursuant to the Internal Revenue Code for income tax purposes except for amounts computed under Section 55 of the Internal Revenue Code. Section 7-2-2(A) NMSA 1978 defines "adjusted gross income" as defined in Section 62 of the Internal Revenue Code.

X and Y, as residents of New Mexico, are subject to New Mexico income tax on the amounts withdrawn from IRAs and included in federal adjusted gross income. There are no statutory or constitutional limitations that provide for an IRA cost basis different from the federal cost basis.

X and Y did pay Pennsylvania tax on income equal to the IRA and 401(K) contribution amounts in the years 1986 through 1998 because Pennsylvania did not allow a deduction equivalent

to the federal reduction of income for those contributions. X and Y's income from 1986 through 1998 would not have been allocated or apportioned income to New Mexico because X and Y were not residents of New Mexico in those years. Since the income taxed by Pennsylvania in those years was not subject to taxation by New Mexico, no credit is allowed for taxes paid to another state under Section 7-2-13. In addition, X is not entitled to a credit for amounts included in the computation of taxes due to the City of Philadelphia under Section 7-2-13 because the credit does not apply to municipal-level taxes.